IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Bail Appl..No. 7240 of 2007()

CRIME NO.252/2005 OF NELESHWAR POLICE STATION

PETITIONER/ACCUSED NO.1:

MUHAMMED, S/O. MOIDEEN,
THOPPIL KOTTAPPURAM, NILESWAR.

BY ADV. SMT.T.SUDHAMANI

RESPONDENT: STATE

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
(CRIME NO.252 OF 2005 OF NILESWAR POLICE
STATION).

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7240 OF 2007

Dated this the 27th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment for offences punishable, inter alia, under section 308 read with 149 IPC. The investigation is now complete. Final report has already been filed. The petitioner was not available before the learned Magistrate to proceed with the matter. The case against him has, hence, been split up. The co-accused have already been committed to the Court of Sessions. Coercive process has been issued against the petitioner by the learned Magistrate. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. He had no knowledge of the proceedings at all. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that

directions under Section 438 and/or 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. The learned Public Prosecutor submits that the petitioner may be directed to surrender before the learned Magistrate and seek regular bail. I find merit in the submission.

4. After the decision in ***Bharat Chaudhary and another Vs. State of Bihar*** [AIR 2003 SC 4662], it is now trite that powers under section 438 Cr.p.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and

expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in ***Alice George Vs. Deputy Superintendent of Police*** [2003 (1) KLT 339].

6. In the result, this petition is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

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